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No. 03-1044

Supreme Court, U.S.
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In The
Supreme Court of the United States

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC. and MARSHALL JOHNSON, and JERRY VANBOETZELAER, Individually and on Behalf of All Others Similarly Situated,

Petitioners,

v.

NEW PRIME, INC., d/b/a PRIME, INC., and SUCCESS LEASING, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTER STATEMENT OF QUESTIONS PRESENTED

Respondents respectfully suggest that the issues framed by Petitioners are more accurately stated as follows:

1. Whether the Eighth Circuit abused its discretion in finding that class certification was inappropriate where individualized factual determinations of which proposed class members had claims for damages under 49 U.S.C. § 14704 would predominate over any common issues?

2. Whether a conflict between the Eighth Circuit and a decision from a District Court that has not yet been reviewed by the Sixth Circuit constitutes a "conflict" sufficient to justify the Court's review?

PARTIES TO THE PROCEEDING

The Respondents to this case are: New Prime, Inc. d/b/a Prime, Inc., and Success Leasing, Inc. Neither New Prime, Inc. nor Success Leasing, Inc. are publicly-traded companies. Neither New Prime, Inc. nor Success Leasing, Inc. have any parent companies nor does a publicly-held company own 10% or more of either corporation's stock.

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STATEMENT OF THE CASE

I. Background

Petitioners filed this action alleging that Respondents New Prime, Inc. ("Prime") and Success Leasing, Inc. ("Success Leasing") violated certain federal regulations, sometimes referred to as the Truth-in-Leasing regulations, that govern contractual relationships between owner-operator truck drivers and federally regulated motor carriers. *See* 49 C.F.R. § 376.12. Although the Truth-in-Leasing regulations have been in effect since about 1979, owner-operators could not sue for violations of the regulations until the enactment of the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), specifically 49 U.S.C. § 14704. The ICCTA was enacted on December 29, 1995 and became effective on January 1, 1996.

Respondent Prime is a nationwide motor freight carrier authorized by the Department of Transportation. Prime's driver fleet consists mostly of independent contractors, referred to in the industry as owner-operator truck drivers. An owner-operator is an individual who owns or controls a tractor unit and "leases" that tractor unit and his driving services to the trucking company to transport freight. The owner-operator is compensated either on a per-mile basis or is paid a percentage of revenue earned on the shipment. As independent business persons, owner-operators are responsible for their own operating expenses such as fuel, repairs, maintenance, tires, insurance, taxes and other expenses related to operating an over-the-road tractor.

The relationship between Prime and owner-operators was governed by a "Service Contract" or an "Independent

Contractor Operating Agreement" (collectively the "Operating Agreement"), depending on when the owner-operators were hired by Prime. *Owner-Operator Independent Drivers Ass'n, Inc. v. New Prime, Inc.*, 339 F.3d 1001, 1004 n. 2 (8th Cir. 2003). The Operating Agreement governed the terms of the financial arrangements between owner-operators and Prime, including how the drivers would be compensated. In addition, the Operating Agreement set forth the driver's responsibility for operating expenses and how the parties would account for advances made by Prime to the owner-operators to assist in covering those operating expenses.

Some owner-operators for Prime actually own a tractor that is then leased to Prime, while other owner-operators lease their equipment. Success Leasing leases tractor units to some of Prime's owner-operators. This relationship is governed by a separate Lease Agreement between the owner-operators and Success Leasing.

In their Complaint, Petitioners sought injunctive relief and money damages on behalf of themselves and on behalf of a class of other owner-operator truck drivers for Prime. Petitioners alleged that Respondents failed to return certain escrow funds maintained under the Operating Agreement and the Lease Agreement after the owner-operator terminated the relationship with Prime and/or Success Leasing. Petitioners alleged that there were more than 10,000 class members.

Prime and Success Leasing filed counterclaims against one of the class representatives. At the time he prematurely terminated his relationship with Prime, Petitioner Johnson owed Prime more than $7,000 relating to advances that he took from Prime to cover his operating

expenses. Prime alleged that Johnson breached the Operating Agreement by failing to repay these advances. Success Leasing also filed a counterclaim against Petitioner Johnson for breach of the Lease Agreement because he terminated the Lease Agreement before its full term, thereby causing damage to Success Leasing related to lost rental payments. In his reply to these counterclaims, Johnson denied that he breached his agreements with the Respondents and raised numerous affirmative defenses, including laches, waiver, and estoppel.

The claims against Petitioner Johnson are not unique to him. Many former drivers for Prime who are members of the putative class terminated their Operating Agreements with Prime while owing Prime for advances taken to operate their vehicles. For the period that Petitioners sought class certification, the amount of debt owed by members of the proposed class to Prime exceeded $20,000,000, in excess of the amount of damages that Petitioners alleged was owed to members of the putative class. Many drivers also prematurely terminated their Lease Agreements, causing damages to Success Leasing that depended on (1) how early they prematurely terminated the Lease Agreement, (2) how long the tractor unit remained idle until it was re-leased or otherwise disposed of, and (3) how many expenses were incurred to maintain the vehicle and to re-lease or dispose of the vehicle. Respondents asserted the amounts owed based on such breaches as offsets against proposed class members.

II. Proceedings Below

The Owner-Operator Independent Drivers Association, Inc. ("OOIDA") and two of its members filed this case in the United States District Court for the Western District of

Missouri. The District Court dismissed Petitioner's complaint on the ground that the Federal Highway Administration had primary jurisdiction, and Petitioners appealed. On appeal, the Eighth Circuit reversed the District Court's holding on primary jurisdiction, finding that the FHWA did not have exclusive jurisdiction over interpreting its own regulations. *See Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc.*, 192 F.3d 778 (8th Cir. 1999), *cert. denied*, 529 U.S. 1066 (2000).

On remand for further proceedings, and after significant discovery, Respondents moved for partial summary judgment on some of the individual plaintiffs' claims because the ICCTA could not be applied retroactively to grant a cause of action for claims that arose before the ICCTA became effective, as held by the Court in *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). In its January 22, 2002 Order, the District Court agreed, holding that the ICCTA did more than simply create federal court jurisdiction over such regulatory disputes – it also provided a new private right of action for damages that did not exist before the enactment of the ICCTA. *See Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc.*, 339 F.3d 1001, 1005 (8th Cir. 2003).

On February 25, 2002, the District Court denied OOIDA's request for class certification. *Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc.*, 213 F.R.D. 537 (W.D.Mo. 2002), *aff'd*, 339 F.3d 1001 (8th Cir. 2003). Among other things, the District Court found that the individual issues presented in the case predominated over the common issues making the case unsuitable for class certification under Rule 23(b)(3).

On August 2, 2002, the District Court entered summary judgment in favor of Respondents on the individual plaintiffs' remaining claims as time-barred based on the same retroactivity holding in the court's January 22, 2002 Order. *See Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc.*, 339 F.3d at 1005. Finally, on August 14, 2002, the District Court entered summary judgment in favor of Respondents on OOIDA's claims for injunctive relief, finding Respondents' Lease Agreements as amended complied with the Truth-in-Leasing regulations and that OOIDA's claims were moot. *Id* at 1005-06.[1] Because all federal question claims were resolved, the District Court dismissed Respondents' counterclaims against Petitioner Johnson under 28 U.S.C. § 1367(c)(3).

The Eighth Circuit affirmed the rulings of the District Court. First, the Eighth Circuit determined that the claims of Johnson and Vanboetzelaer sought an improper retroactive application of the ICCTA contrary to the Court's rulings in *Landgraf* and *Hughes Aircraft Co. v. United States*, 520 U.S. 939 (1997). Moreover, reviewing the District Court's denial of class certification for abuse of discretion, the Eighth Circuit found that 49 U.S.C. § 14704(a)(2) affords a right to recover only to parties that have sustained damages as a result of carrier violation. The Court further found that individual determinations would be required to determine whether individual class members had sustained damages. Based on the record, the Eighth Circuit concluded that this inquiry would require

[1] Petitioners do not appear to challenge the rulings of the District Court and the Eighth Circuit that Respondents' amended Lease Agreements complied with the Truth-in-Leasing regulations.

an examination of all proposed class members accounts, including the various advances, offsets and other items. The Eighth Circuit found that such individualized determinations predominated over questions common to the class thus making certification under FED.R.CIV.P. 23(b)(3) improper.

REASONS FOR DENYING THE WRIT

I. The District Court and the Eighth Circuit Relied on Well-Established, Uniform Legal Principles in Finding That Class Certification Was Improper Based on the Particular Factual Circumstances of This Case.

Both the District Court and the Eighth Circuit focused on FED.R.CIV.P. 23(b)(3) in finding that Petitioners' claims could not be maintained as a class action. Under Rule 23(b)(3), a court must find "that the questions of law or fact common to the members of the class predominate over any question affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." In addition, courts examine "the difficulties to be encountered in the management of the class" in determining whether a class action can be maintained under Rule 23(b)(3). FED.R.CIV.P. 23(b)(3)(D); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 164 (1974) ("[M]anageability . . . encompasses the whole range of practical problems that may render the class action format inappropriate for a particular suit.").

Petitioners attempt to create a conflict among the Circuits where none exists. None of the Circuit decisions

cited by Petitioners reject or criticize holdings of any other Circuit concerning whether individualized issues concerning the fact of damage prevent certification under FED.R.CIV.P. 23(b)(3). Rather, the cases cited by Petitioners demonstrate that the issue of class certification is often a fact intensive analysis that has traditionally been left to the discretion of the trial court. *See* 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure 2d* § 1785, p. 119 (2d ed. 1986). In this case, the District Court and the Eighth Circuit fully examined the factual record and properly exercised their discretion in denying class certification. *King v. Kansas City Southern Industries, Inc.*, 519 F.2d 20, 25 (7th Cir. 1975) ("[D]etermination of manageability of class actions is, once Rule 23 is properly applied, a matter for the trial court's discretion.").

Petitioners primarily rely on *In re Visa Check/ Mastercard Antitrust Litigation*, 280 F.3d 124 (2d Cir. 2001), *cert. denied*, 536 U.S. 917 (2002). But far from showing a conflict among the Circuits, this case simply confirms the fact-intensive nature of class determinations. In fact, there the Second Circuit specifically acknowledged that a case can be unmanageable as a class action, particularly with regard to damages. 280 F.3d at 142. The Second Circuit further acknowledged with approval its prior holding in *Abrams v. Interco, Inc.*, 719 F.2d 23, 31 (2d Cir. 1983), where it found that proof of damages in a putative class action presented insurmountable manageability issues that precluded certification.

The Second Circuit in *In re Visa Check/Mastercard Antitrust Litigation* explained the factual disparities between the matter before it and its earlier decision in *Abrams*. It referenced the district court's extensive analysis,

and specifically an expert opinion that included a methodology for computing class-wide damages. *In re Visa Check/Mastercard Antitrust Litigation*, 280 F.3d at 133-35. In contrast, the Second Circuit in *Abrams* noted that a trial on plaintiffs' theory of the case "would necessitate 'individual trials on damages' for 'thousands or millions' of class members." *Id.* at 142 (quoting *Abrams*, 719 F.2d at 31). The Second Circuit also emphasized that "'manageability of a proposed class action is always a matter of justifiable and serious concern for the trial court and peculiarly with its discretion.'" *Id.* at 141 (quoting *Windham v. American Brands, Inc.*, 565 F.2d 59, 65 (4th Cir. 1977)).

Other cases cited by Petitioners similarly show that different conclusions on class certification result from different factual circumstances, not from any conflict between the Circuits over the legal requirements for class certification. For instance, Petitioners claim that the Third Circuit's ruling in *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 456 (3rd Cir. 1977), *cert. denied*, 434 U.S. 1086 (1978), conflicts with the Eighth Circuit's opinion here. To the contrary, the Court in *Bogosian* specifically recognized that its "conclusion is not at variance with recent cases in other circuits indicating that fact of damage could not be proven on a class basis, since those cases turned upon their individual facts, rather than upon a rule of law precluding common proof of fact of damage." *Id.* at 455. In a more recent decision, the Third Circuit affirmed the district court's holding that "whether each class member sustained economic injury presented insurmountable obstacles to certification." *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 187-88 (3d Cir. 2001)

(further commenting that "plaintiffs' expert provided no model formula to calculating damages").[2]

II. The District Court and the Eighth Circuit Correctly Applied The Court's Legal Standards in Ruling that 49 U.S.C. § 14704 Cannot Be Applied Retroactively.

The Eighth Circuit correctly ruled that the ICCTA, which for the first time gave owner-operators like Petitioners a private right of action to seek money damages for alleged violations of the Truth-in-Leasing regulations, could not be applied retroactively. In so ruling, the Eighth Circuit correctly applied the Court's "presumption against retroactive legislation [that] is deeply rooted in our jurisprudence." *Hughes Aircraft Co. v. U.S.*, 520 U.S. 939, 946 (1997); *see also Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). More importantly, the Eighth Circuit's decision is not in conflict with any decisions of other Circuits.

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[2] The cases cited by Petitioners from the First and Ninth Circuits likewise do not suggest any conflict in the Circuits. In *Smilow v. Southwestern Bell Mobile Systems, Inc.*, 323 F.3d 32, 40 n. 8 (1st Cir. 2003), the First Circuit acknowledged that "[c]ourts have denied class certification where these individual damage issues are especially complex or burdensome." In contrast to the Eighth Circuit's finding here, the *Smilow* Court found that the specific factual circumstances before it "render[ed] unnecessary an evidentiary hearing on each claim." *Id.* at 40. Similarly, the Ninth Circuit in *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976), recognized that, on the record before it, the "process of computing individual damages will be virtually a mechanical task."

A. The Eighth Circuit Correctly Ruled that the ICCTA Changed the Substantive Rights of Motor Carriers Such that the Statute Could Not Be Applied Retroactively.

The Eighth Circuit correctly ruled that the ICCTA altered the motor carriers' substantive rights such that the private right of action created by the ICCTA could not be applied retroactively. In *Hughes*, the Court ruled that "[i]n permitting actions by an expanded universe of plaintiffs with different incentives, the [new statute] essentially creates a new cause of action, not just an increased likelihood that an existing cause of action will be pursued." 520 U.S. at 950.

The ICCTA did much more than simply change the forum in which a claim must be brought to enforce the regulations at issue. The private enforcement and damages provisions of 49 U.S.C. § 14704 clearly create new liability for motor carriers, liability that did not exist before January 1, 1996. The Interstate Commerce Act, which predated the ICCTA, made rail and water carriers – *but not motor carriers* – liable for damages for violations of all its provisions. *Compare* former 49 U.S.C. § 11705 *with* former 49 U.S.C. § 11706. Former 49 U.S.C. § 11705(b)(2) read: "A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I [rail carriers] or III [water carriers] of chapter 105 of this title is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this subtitle." Motor carriers were liable only for overcharges (*see* former 49 U.S.C. § 11705(b)(1),which applied to all types of carriers) or amounts paid by shippers under unreasonable or discriminatory rates (*see* former 49 U.S.C § 11705(b)(3)). Motor carriers were *not* formerly liable for

damages for the conduct alleged by Petitioners. None of the cases cited by Petitioners stand for the proposition that motor carriers were liable for money damages before January 1, 1996.[3]

No conflict exists in the Circuits over the retroactivity of 49 U.S.C. 14704(a). The Eighth Circuit is the first Circuit to review the retroactivity of the private right of action under the ICCTA. Although Petitioners point to a single decision from the Southern District of Ohio that is at odds with the Eighth Circuit's opinion here, such a conflict does not present an issue for the Court. Supreme Court Rule 10.1; *Braxton v. U.S.*, 500 U.S. 344, 347 (1991) (noting that the "principal purpose" of certiorari jurisdiction is to resolve conflicts among the United States courts of appeals or conflicts between United States courts of appeals and state courts of last resort).

B. The Eighth Circuit Correctly Applied *Landgraf* and *Hughes* in Finding that the Private Enforcement Action of the ICCTA Was Not Retroactive.

Petitioners attempt to create a conflict among the Circuits by misconstruing the Court's holding in *Landgraf*.

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[3] Petitioners exaggerate the issues and the holding in *Interstate Commerce Comm'n v. Atlas Van Lines, Inc.*, 825 F. Supp. 771 (N.D. Tex. 1993). *Atlas* did not authorize a private right of action against carriers. Nor were the remedies sought there the same remedies created by the ICCTA. *Atlas* did not recognize any authority of the ICC to seek money damages. In *Atlas,* the ICC sought not money damages, but an injunction prohibiting Atlas from violating the ICC's regulations. 825 F. Supp. at 776. *Atlas* thus provides no support for the recovery of money damages for violations of the regulations at issue here.

Petitioners incorrectly read *Landgraf* to impose an inflexible burden of inspecting a statute's legislative history to determine its retroactivity even if the statute is unambiguous on its face. But nothing in *Landgraf* or the Court's subsequent ruling in *Hughes* suggests that the Court has departed from longstanding principles of statutory construction.

The Court has instead confirmed the traditional tenets of statutory construction when determining a statute's retroactive application. The Court has stated that "[i]f the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." *Landgraf*, 511 U.S. at 280. *Landgraf* is clear as to the method for determining such "clear congressional intent." For instance, *Landgraf* instructed that statutes "will not be construed to have retroactive effect unless their language requires it." *Id.* at 264; *id.* at 263 ("express command[s]" or "unambiguous directive" is necessary to authorize "retroactive application"); *id.* at 286 (Scalia, J., concurring in judgment) (agreeing that "a legislative enactment affecting substantive rights does not apply retroactively absent *clear statement* to the contrary").

The Eighth Circuit here correctly applied the Court's directives in *Landgraf* and *Hughes*. The Eighth Circuit determined that "Congress has not expressly prescribed the [ICCTA's] reach." 339 F.3d at 1007. The language of the ICCTA does not require retroactive application of the claims created by 49 U.S.C. § 14704. Section 2 of the ICCTA speaks to the "Effective Date" of the Act. It states: "Except as otherwise provided in this Act, this Act shall take effect on January 1, 1996." Pub. L. 104-88, Section 2. This language does not require retroactivity, and certainly is

not so "clear, strong and imperative" as to compel it. Indeed, the ICCTA contains no language at all that suggests that the private enforcement and damages provisions of 49 U.S.C. § 14704 are to be applied retroactively. Finding no such a "clear statement" from Congress within the statute, the Eighth Circuit correctly ruled that 49 U.S.C. § 14704 is not to be applied retroactively.

The Eighth Circuit's decision does not conflict with the decisions of other Circuits. Petitioners misstate the rationale of the decisions in *Scott v. Boos*, 215 F.3d 940 (9th Cir. 2000), and *Benjamin v. Fraser*, 343 F.3d 35 (2d Cir. 2003). Neither of these cases suggests a requirement that a reviewing court must always inspect a statute's legislative history to determine whether it is retroactive. In *Scott*, while the court discussed the statute's legislative history, it rejected the legislative history because it did not provide any evidence of a "clear congressional intent." 215 F.3d at 948. Similarly, the court in *Benjamin* rejected the legislative history as unpersuasive and unreliable. 343 F.3d at 48 n. 14.

Even if *Landgraf* compelled the courts to examine legislative history, nothing in the Eighth Circuit's opinion here suggests that it did not consider it. 339 F.3d at 1007 (holding that "[w]ith regard to the ICCTA, Congress has not expressly prescribed the statute's reach"). And just as in *Scott* and *Benjamin*, the legislative history of the ICCTA does not provide the "clear, strong and imperative" direction that would require its retroactive application. Petitioners cite nothing in the legislative history that indicates that the Eighth Circuit would have reached a different result had it examined the ICCTA legislative history.

C. In Creating the Private Enforcement Action for Money Damages under the ICCTA, Congress Left Intact Previous Agency Enforcement Mechanisms.

Petitioners' request the Court to infer from the ICCTA that Congress must have intended retroactive application because of a purported enforcement void for pre-ICCTA conduct. But Petitioners' premise is flawed – no such enforcement void was created by the ICCTA. Under the statute, the same enforcement powers previously exercised by the Interstate Commerce Commission ("ICC") were transferred to the Surface Transportation Board ("STB"). Indeed, 49 U.S.C. § 14701(a) explicitly grants the STB or the Secretary of the Department of Transportation ("the Secretary") the power to compel compliance with the regulations. In addition, 49 U.S.C. § 14702(a)(2) grants the STB or the Secretary the power to bring a civil action to compel compliance. These powers are identical to the powers exercised previously by the ICC. Simply recognizing that the newly-created *private* right of action should not be applied retroactively (when the administrative remedies remain unchanged) does not create an enforcement void.

D. The Eighth Circuit Correctly Ruled that the ICCTA Could Not Be Applied to Contracts Entered Into Prior to January 1, 1996.

Petitioners' damage claims were based entirely on agreements with Respondents that were executed before the effective date of the ICCTA. The law has long recognized that contractual agreements are governed by the law existing when the contract was made. In *Landgraf*, the

Court stated that "[t]he largest category of cases in which we have applied the presumption against statutory retroactivity has involved new provisions affecting contractual or property rights, matters in which predictability and stability are of prime importance." 511 U.S. at 271.

With respect to contract rights, the Court has long recognized that "[t]he first rule of construction is that legislation must be considered as addressed to the future, not the past. . . . The rule has been expressed in varying degrees of strength but always one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights . . . unless such be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.'" *U.S. v. Security Industrial Bank*, 459 U.S. 70, 79 (1982) (quoting *Union Pacific R. Co. v. Laramie Stock Yards Co.*, 231 U.S. 190, 199 (1913)); *see also Jackson v. People's Republic of China*, 596 F. Supp. 386, 388 (N.D. Ala. 1984) (noting that courts generally look unfavorably on retroactive application of statutes; it is "well established that the rights of a party pursuant to a contractual agreement are determined by the law existing when the contract was made"), *aff'd*, 794 F.2d 1490 (11th Cir. 1986).

The ICCTA, including its enforcement provision at 49 U.S.C. § 14704, was enacted on December 29, 1995 and became effective on January 1, 1996. Because here all agreements that are the subject of this case were executed before that effective date, the Eighth Circuit properly affirmed judgment in favor of Respondents on all claims for damages.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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